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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/037,067

12/21/2001

David E. Clune

Clune 3-4-18

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47384 7590 01/25/2007
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EXAMINER

NEURAUTER, GEORGE C

ART UNIT

PAPER NUMBER

2143

MAIL DATE

DELIVERY MODE

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/037,067	Applicant(s) CLUNE ET AL.	
	Examiner George C. Neurauter, Jr.	Art Unit 2143	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: The Applicant argues that the combination of the teachings of Bonomi and Knuth is improper since the Applicant argues there is no proper motivation within Knuth to combine the teachings of the references. The Examiner respectfully disagrees, especially in view of the cited prior art and the knowledge of one skilled in the art as noted on page 6 of the Final Rejection mailed 22 December 2006. One of the basic requirements for a prima facie case of obviousness is there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. As shown previously, one of ordinary skill in the art has knowledge of a circularly linked list as taught in Knuth as a basic data structure. The Applicant's arguments regarding the age of the Knuth reference is also not persuasive. Knuth is used to demonstrate the knowledge of one of ordinary skill in the art and that the knowledge of circularly linked lists is well known and used in the art. One of ordinary skill in the art would have been motivated to combine the teachings of Bonomi and Knuth since one of ordinary skill in the art has knowledge that circularly linked lists are used as a data structure so that there appears to be no beginning or end to the linked list and may be entered at any point, which is also shown in Knuth (see page 270 as previously cited). So, Knuth also provides motivation for combining the circularly linked list with the teachings of Bonomi. Also, since both Bonomi and Knuth are directed to traversing linked list or queues, there would have been a reasonable expectation of a successful combination of the teachings of Bonomi and Knuth. Therefore, the Examiner has established a proper prima facie case of obviousness. The Applicant has failed to provide any persuasive evidence for nonobviousness and/or provided any persuasive arguments for nonobviousness after the Examiner has established a prima facie case of obviousness. See MPEP 2142. Also, the Examiner submits that the Examiner's duty to explain why the combination of the teachings is proper has been fulfilled. See MPEP 2142 and Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). Therefore, the combined teachings of Bonomi and Knuth teach the claimed invention and the claims are not in condition for allowance.